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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,408	03/12/2001	Mathew F. Ogle	1416.20US01	1108
27367	7590	12/19/2006	EXAMINER	
WESTMAN CHAMPLIN & KELLY, P.A.			NAFF, DAVID M	
SUITE 1400			ART UNIT	PAPER NUMBER
900 SECOND AVENUE SOUTH				
MINNEAPOLIS, MN 55402-3319			1657	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/19/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/804,408	OGLE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David M. Naff	1657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 October 2006.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-9, 11-28 and 34-43 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9, 11-28 and 34-43 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_\_.

**DETAILED ACTION**

A response of 10/2/06 to an office action of 6/1/06 presented arguments and did not amend the claims.

Claims examined on the merits are 1-9, 11-28 and 34-43, which are 5 all claims in the application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

Claims 1-9, 11-28 and 34-43 are rejected under 35 U.S.C. 112, 10 first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As set forth in the previous office action of 6/1/06, support is 15 not found in the specification for reciting "the bridges are not glutaraldehyde" in claims 1 and 16, and "the bridge molecules are not glutaraldehyde" in claims 34 and 36. The specification nowhere sets forth that the bridges are not glutaraldehyde. While the 20 specification discloses bridge substances that are not glutaraldehyde, other compounds having the cross-linking function of glutaraldehyde are also not included with the specific bridges recited. There is no basis in the specification for only glutaraldehyde being excluded as a bridge because it is not included in the specific bridge materials 25 recited in the specification (pages 19 and 20). To exclude

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glutaraldehyde as a bridge, it is suggested the claims be amended to recite a Markush group of the specific bridge compounds recited in the specification.

***Response to Arguments***

5 It is granted as urged in the response that negative limitations may be used in claims, the linkers and bridges are chemically different, the linker can be dialdehyde cross-linking agents including glutaraldehyde, and the functional groups of the bridges are generally non-reactive with unmodified tissue or with other bridges. However,

10 this does not establish that the specification has adequate support for excluding only glutaraldehyde as a bridge when requiring an invention of the scope of claims 1, 16, 34 and 36. There is insufficient basis for excluding only a glutaraldehyde linker as a bridge, and not excluding other disclosed linkers as bridges when the

15 linker is chemically different from the bridge. Claims 1, 16, 34 and 36 now present a concept of the invention not originally disclosed and supported in the specification.

***Claim Rejections - 35 USC § 103***

Claims 1-9, 11-28 and 34-43 are rejected under 35 U.S.C. 103(a)

20 as being unpatentable over Ogle et al (5,958,669) in view of Yang et al (5,935,168) for reasons in the previous office action and for reasons herein.

The claims are drawn to tissue containing linkers bonded to tissue and bridge molecules (excluding glutaraldehyde) bonded between

25 two or more of the linkers, to a method of crosslinking tissue to

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5 prepare the tissue having linkers and bridge molecules, to tissue containing modified sites having bridge molecules bonded to two or more of the modified sites, and to a method of crosslinking tissue to prepare the tissue having modified sites and bridge molecules. In all these embodiments, functional groups of the bridges are required to be generally non-reactive with other bridges.

Ogle et al disclose crosslinking tissue to fix tissue by reacting the tissue with glutaraldehyde.

10 Yang et al disclose crosslinking tissue with glutaraldehyde, and then reacting with a diamine followed by reacting with additional glutaraldehyde (col 1, line 43 and claims 8-10).

15 After reacting with glutaraldehyde as disclosed by Ogle et al, it would have been obvious to react with a diamine and then with additional glutaraldehyde as suggested by Yang et al. This will result in the diamine being a linker and the glutaraldehyde being a bridge. Additionally, after initially crosslinking with glutaraldehyde some free aldehyde groups will remain that will react with the diamine and result in the glutaraldehyde being a linker and the diamine being a bridge. In this embodiment, glutaraldehyde is not 20 the bridge. The aldehyde groups of glutaraldehyde are generally non-reactive with other aldehyde groups of another glutaraldehyde under certain conditions disclosed by Ogle et al that control self-polymerizing. The amine groups of a diamine will not react with amine groups of another diamine. This will result in a bridge not reacting 25 with another bridge.

***Response to Arguments***

Applicant's arguments filed 10/2/06 have been fully considered but they are not persuasive.

The response urges that the Ogle et al and Yang et al are 5 directed to preventing calcification of a prosthesis, whereas the present invention is directed to a novel cross-linked tissue, and making cross-linked tissue having strength and flexibility. However, cross-linking as claimed can result in preventing calcification as disclosed by Ogle et al and Yang et al, and tissue cross-linked as 10 disclosed by Ogle et al and Yang et al can have strength and flexibility as tissue cross-linked as claimed.

The response urges that there is no factual basis for free aldehyde groups remaining after reaction with glutaraldehyde, and for a diamine reacting with both activated carboxyl groups and free aldehyde 15 groups. However, Ogle et al disclose (col 6, lines 50-55) that since calcification has been associated with unreacted aldehyde groups, a determination of quantities of unreacted aldehyde groups may provide some indication of calcification susceptibility. This disclosure indicates that free unreacted aldehyde groups are present. Amine 20 groups reacting with aldehyde groups and carboxyl groups is disclosed by Yang et al (col 6, lines 15-15-24).

The response incorporates by reference the remarks made in the response 3/24/06. However, these remarks were responded to in the office action of 6/1/06 and were found to be unpersuasive.

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**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is 5 set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action 10 is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier 15 communications from the examiner should be directed to David M. Naff whose telephone number is 571-272-0920. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. 20 The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for 5 unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer 10 Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David M. Naff  
Primary Examiner  
Art Unit 1657

DMN

15 12/8/06